

## SCHEDULE

Sub-taluk : Yanam

Village : Kanakalapeta,  
Kanakalapeta Revenue Village.

Sl. No.	Town-survey No.	Classification	Name of the owner/enjoyer/ interested person	Extent to be acquired
(1)	(2)	(3)	(4)	(5)
				H. A. Ca.
1	C/4/2	R.M.	M/s. Kundanya Udyog Auto Ancillaries Private Limited.	00 51 95

(By order of the Lieutenant-Governor)

**G. RAGESH CHANDRA,**  
Special Secretary -cum- District Collector.

GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G.O. Rt. No. 89/AIL/Lab./J/2010, dated 5th May 2010)

## NOTIFICATION

Whereas, the Award in I.D. No.3/2007, dated 25-2-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Somakan Marine Foods Limited, Yanam and Thiru M. Sridhar Kumar over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour), that the said Award shall be published in the official gazette. Puducherry,

(By order)

**G. MALAR KANNAN,**  
Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT (II ADDITIONAL  
DISTRICT JUDGE) AT PONDICHERRY**

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

Thursday, the 25th day of February 2010.

## I.D. No. 3/2007

Sridhar Kumar,  
Forklift Operator,  
M/s. Somakan Marine Foods Limited,  
Adavipolam, Yanam . . . Petitioner

Versus

The management of M/s. Somakan  
Marine Foods Limited,  
Adavipolam, Yanam . . . Respondent

This industrial dispute coming on this day for hearing before me, in the presence of Thiru R.S. Zivanandam. Advocate for the petitioner, Thiru L. Satish and S. Doraissamy, Advocates for the respondent, upon hearing both sides, after perusing the case records, this court passed the following :

## ORDER

This industrial dispute has been referred to this court by the Government of Pondicherry *vide* G. O. Rt. No. 24/2007/Lab./AIL/J, dated 19-2-2007 of the Labour Department, Pondicherry to resolve the following disputes:—

(a) Whether the non-employment of Thiru M. Sridhar Kumar, Forklift Operator by the management of M/s. Somakan Marine Foods Limited, Yanam is justified ?

(b) If not, to what relief he is entitled?

(c) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. Today, the counsel for the petitioner made an endorsement stating that the petition is not pressed, since the petitioner could not be traced in spite of several reminders. The same is recorded. In view of the same the industrial dispute is dismissed.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 25th day of February, 2010.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 90/AIL/Lab./J/2010, dated 5th May 2010)

**NOTIFICATION**

Whereas, the Award in I.D.No.56/2001, dated 25-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Co-operative Sugar Mills Limited, Puducherry and its workman Thiru T. Rajendiran over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**G. MALAR KANNAN,**  
Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court.  
Pondicherry.

*Thursday, the 25th day of March 2010.*

**I.D. No. 56/2001**

T. Rajendiran . . . Petitioner.

*Versus*

The Managing Director,  
Pondicherry Co-operative Sugar  
Mills Limited, Pondicherry. . . Respondent.

This industrial dispute coming on 18-3-2010 for final hearing before me in the presence of Thiru B. Mohandoss, Counsel for the petitioner, Thiru K. Palaniappaan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.178/2001/A1L/L, dated 1-10-2001 for adjudication of the following industrial dispute:

(a) Whether the non-employment of Thiru T. Rajendiran by the management of M/s. The Pondicherry Co-operative Sugar Mills Limited, Pondicherry is justified or not?

(b) To what relief, the said workman is entitled to?

(c) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner joined the service of the respondent mills on 2-1-1984 as Turner -II. He submitted an application, dated 14-10-1996 seeking leave for a period of three years to take up employment in a foreign country. On receipt of the application, the Factory Manager through whom the application was submitted to the Managing Director, told the petitioner that on principle there would not be any problem for getting the leave sanctioned for him and he could take preparatory steps for leaving India. He also met the Managing Director subsequently and requested him to sanction the leave for three years as had been done for Rajagopalan, P. Balu and S. Vengatesan, who were granted extraordinary leave for a period of three years by the respondent mills. The Managing Director told the petitioner that he would do the needful in this regard. Believing the words of the Factory Manager as well as the Managing Director, the petitioner left India after informing the Factory Manager Mr. K.M. Ravi and the Deputy Chief Engineer Mr. Vedhaburi. His attempt to meet the Managing Director of the respondent mills ended in vain. The petitioner left Pondicherry on 17-10-1996 with a view to taking up foreign employment after 20-10-1996 for a period of two years. In fact the petitioner obtained passport to go to the foreign country only on submission of no objection certificate issued by the respondent.

The petitioner went to Malaysia and joined as Turner in Sam San Hin Loong Engineering Works Private Limited and subsequently in April 1997, the petitioner was transferred to a sister concern of the above company by name Dolphin Engineering Limited at Kuala Lumpur.

In the meanwhile, the respondent management sent a letter, dated 4-1-1997 informing the petitioner that his leave application was rejected and he should join duty in the respondent mills immediately. As the petitioner had already started serving under the foreign employer on contract basis, he could not leave the same, since his employer did not permit him to leave the service before completing the contract period. Explaining the above circumstances and pointing out his inability to report to duty at the respondent mills, the petitioner sent a letter, dated 13-1-1997 to the respondent. But the respondent informed the petitioner through a letter, dated 9-5-1997 that the petitioner's explanation could not be accepted and he should report to duty at the respondent mills within fifteen days and on his failure to do so, the disciplinary action would be taken against him.

The respondent proceeded with the disciplinary action against the petitioner for the charge of unauthorised absence from duty and Thiru Robert Mariadoss was appointed as Enquiry Officer. The petitioner was informed through a letter, dated 4-8-1997 about appointment of the said Enquiry Officer and the petitioner was asked therein to appear before the Enquiry Officer on 22-8-1997. Subsequently Thiru A. Antony Sampath Kumar was appointed as Enquiry Officer in his place. Seeing the publication of enquiry notice in Dinamalar, dated 9-3-1998, fixing the date of hearing as 25-3-1998, the petitioner's wife sent fax message to the petitioner about the same. But the Enquiry Officer did not send any notice of hearing to the petitioner to his foreign address, when in fact, he had already submitted his foreign address to the respondent company before leaving India and the fact of the petitioner's employment in Malaysia was within the knowledge of Enquiry Officer. Then the petitioner sent a letter to the respondent with request to adjourn the enquiry proceedings to the end of April 1998, so as to enabling him to participate in the enquiry proceedings. He also added that in case of necessity, he would appoint one Dhandapani, Welder-II as his defence assistant to represent him in the enquiry proceedings. Through memorandum, dated 6-1-1998, the Managing Director of the respondent mills asked the Enquiry Officer to obtain the relevant

files from the Labour Welfare Officer and instructed the Enquiry Officer to complete the enquiry and submit the report to the Managing Director before 24-1-1998. On receipt of the said letter, the petitioner submitted a letter, dated 28-1-1998 to the respondent explaining his helpless condition and requesting the respondent to grant leave for 2½ years. But the respondent did not accept the request of the petitioner and insisted on the petitioner's taking part in the domestic enquiry through letters, dated 4-3-1998 and 6-4-1998. Then the petitioner informed the respondent that he was taking steps to return to India and to report to duty at the respondent mills before October 1998.

Thereafter, the petitioner did not receive any communication from the respondent. As per the information collected from his Defence Assistant referred to above, the enquiry was conducted on 25-3-1998 and completed on that day itself. On that day, the Presenting Officer of the company himself made a statement and no witnesses were examined and no documents were marked. No opportunity was given to the charge sheeted employee to adduce oral evidence and to mark the documents. The Enquiry Officer did not conduct the enquiry in accordance with principles of natural justice. Only through publication in Dinamalar, dated 24-7-1998, he came to know of his termination from service by the respondent.

Then the petitioner returned to India and met the Managing Director Arokianathan on 12-4-1999 and explained his position. It was followed by the petitioner's representations, dated 3-5-1999, 26-9-1999, 11-10-1999 and 21-2-2000 submitted to the Managing Director. As there was no response from the respondent, the petitioner was constrained to approach the Labour Officer by representation, dated 9-3-2000. During the pendency of the proceedings, the respondent agreed to settle the dispute by way of reinstatement with back wages. But subsequently on 17-7-2001 the respondent represented before the Conciliation Officer and stated that there was no settlement possible and as such the conciliation ended in failure. Hence, this petition.

3. In the counter statement filed by the respondent, it is contended that it is true that the petitioner was employed on 2-1-1984 as Turner-II. The petitioner submitted a leave application, dated 14-10-1996 requesting for leave without specifying the portion of the leave period. Even before his leave application could be processed for due consideration, the petitioner remained unauthorisedly absent with

effect from the same date *i.e.*, 14-10-1996. This act of unauthorised absence is against the leave rules and the standing orders of the respondent mills and it is of grave misconduct.

The respondent by its notice, dated 4-1-1997 informed the petitioner that the leave sought by him was not sanctioned and consequently he was required to report for duty within seven days from the date of receipt thereof as he was employed in essential services. However the petitioner sent a letter, dated 20-1-1997 stating that he had already left the country without obtaining prior permission and joined a company in Malaysia. The respondent has not granted any leave and without ensuring that the leave was sanctioned, he had left the country which amounted to misconduct. In spite of the said intimation, the petitioner did not report for duty.

Under such circumstances a charge memo. dated 9-5-1997 was issued to the petitioner calling for explanation and as the explanation submitted by the petitioner was not satisfactory, a domestic enquiry was ordered to be conducted by the communication, dated 12-7-1997. The Enquiry Officer after collecting all the evidence concluded the enquiry and submitted his report on 4-6-1998, holding that the charges levelled against the petitioner were proved.

After receipt of the Enquiry Report, a show cause notice, dated 18-6-1998 along with the copy of enquiry report was issued to the petitioner, giving an opportunity to offer his explanation on the findings of the Enquiry Officer and also against the proposed punishment. After considering the enquiry report and all the attending circumstances, the management had eventually dismissed the petitioner from service and caused the publication of the order of dismissal addressing to the petitioner. The enquiry was conducted in accordance with the principles of natural justice after giving due opportunity to both sides. Hence, he prays for dismissal of the petition.

4. *The point for determination is:*

Whether the dismissal of the petitioner is justified or not?

5. *On the point:*

The contention of the petitioner is that he submitted an application, dated 14-10-1996 seeking leave for the period of three years to take up employment in a foreign country, that the Factory Manager and Managing Director gave assurance that there would not be any problem in getting his leave sanctioned that and on believing their words, he has left India and joined duty at Malaysia.

6. *Per contra*, the contention of the respondent is that a notice, dated 4-1-1997 has been sent to the petitioner stating that the leave sought by him was not sanctioned and consequently he was required to report for duty within seven days from the date of receipt thereof.

7. From the above contentions, it is clear that the petitioner had left India without sanction of leave by the respondent. When the petitioner has applied for long leave, it is for him to ascertain that the leave was sanctioned and then to proceed to foreign to join duty there. But at the same time, perusal of Ex.B2 notice, dated 4-1-1997 would reveal that the respondent sent a notice to the petitioner informing that his leave has not been acceded to as his services were coming under essentiality and that his absence causes dislocation of work in the mills. When the leave application has been submitted by the petitioner on 14-10-1996 to the respondent, which is also admitted by the respondent in his counter, why they have sent a notice about rejection of leave to the petitioner after 80 days, is not explained by the respondent, particular when the petitioner wanted to go abroad.

8. It is further contention of the petitioner that the respondent company has sanctioned extraordinary leave for a period of three years to the other workers namely P. Rajagopalan, P. Balu and S. Vengatesan with a view to enabling them to take up employment in foreign countries. It is not known to this court that when the extraordinary leave for a period of three years has been granted to the said workers, why the said leave has not been sanctioned to the petitioner, as equality before law has to be ensured.

9. On the side of the respondent, it has been argued that at the request of certain workers, extraordinary leave was sanctioned without pay for a period of three years with effect from 28-1-1995, but subsequently when their services were essentially required, they were recalled from their leave requiring them to report for duty. It is further argued that consequent to the order of the management recalling their leave, two of them returned for duty, while one of them by name P. Rajagopalan who was by then working in overseas employment, was dismissed from service with effect from 21-5-1999 on charges of unauthorised absence after following due principles of natural justice. The learned respondent's counsel further argued that in this case, the leave sought for by the petitioner was not sanctioned, as he was employed in essential services and as his absence was causing dislocation and disruption of the work in the mill.

10. Though granting of leave is a discretionary power on the part of the respondent management, they should see the circumstances of the employees, in which they are working. Normally, when a person goes abroad for any job, he cannot return without completing the contract period. Hence, the respondent management should take careful decision firstly before sanctioning leave and secondly before recalling its employees in the above circumstances. Initially granting leave and subsequently recalling them for work, citing essentiality of service is unfortunate and unfair.

11. The petitioner in his claim statement averred that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. The Inquiry Officer has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings. In fact the petitioner has not committed any misconduct as alleged by the respondent. But the management has taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

12. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquent and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice. Though the petitioner has been given fair chance to peruse the records as well as to cross-examine the witnesses who were examined on the side of the management in the domestic enquiry, he failed to utilise the same. The Inquiry Officer has decided the enquiry in an *ex parte* manner and on considering the documents as well the evidences of the management witnesses, he had rightly come to the conclusion that the charges of the petitioner were proved. On the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the mistake committed by them. Hence, there is no scope to intervene the order of this management by the Labour Court and prays for the dismissal of the reference.

13. The cardinal point that has to be borne in mind in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily and affecting the rights of the person concerned.

14. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him an opportunity of putting his case. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice and they must take care to see that justice is not only done but manifestly appears to be done.

15. Perusal of claim statement would reveal that after receipt of the letter, dated 4-1-1997 from the respondent about non-sanctioning of the leave, he sent letters Ex.P4 and Ex.P5, dated 13-1-1997 and 19-5-1997 respectively about his inability to report for duty. But the respondent proceeded with the disciplinary action. The petitioner then a letter to the Enquiry Officer, requesting to adjourn the enquiry proceedings to the end of April 1998 so as to enable him to participate in the enquiry proceedings. But his request was refused by the Enquiry Officer and he proceeded the enquiry in an *ex parte* manner. No management witnesses have been examined and cross-examined. In the absence of the petitioner, the Inquiry Officer decided the enquiry against him that all the charges framed against him are proved. The Inquiry officer should not have come to a conclusion without giving opportunity to the petitioner, which shows the biasedness of the Inquiry Officer against the petitioner.

16. It is the enquiry conducted *ex parte* and dismissal of the petitioner's service based on the *ex parte* enquiry report is against the principles of natural justice as well as the labour laws. The labour laws are for the welfare of the workmen to safeguard

them from the revengeful attitude of the management towards work force. There is nothing wrong on the part of the management to conduct the enquiry against the petitioner, after giving opportunity to him to participate in the enquiry proceedings and to let in rebuttal evidence and thereafter arriving at a finding. In this case, the enquiry had been conducted in an *ex parte*. Since it was an *ex parte* enquiry, we need not go into the sustainability of the charge. Upon the *ex parte* enquiry report alone, the respondent management also acted to dismiss their employee, which is against the principles of natural justice.

17. The respondent company has taken action against the petitioner based on the *ex parte* enquiry report and when the respondent has conducted the domestic enquiry in a biased manner without giving any opportunity which are entitled for the petitioner as per law as well as by the principles of natural justice, the decision of dismissal of the petitioner from the company by the respondent is an erroneous one and is also unjustified and hence the petitioner can get the benefit of reinstatement.

18. The issue before me namely - as to whether the petitioner is entitled to full back wages must be determined keeping in view the aforementioned background facts in mind. There can, however, be no doubt whatsoever that there has been a shift in the approach of this court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination. The Hon'ble Apex Court and High Courts in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view of the provisions contained in section 106 of the Evidence Act, 1972. This court in the matter of grant of back wages has laid down certain guidelines stating that therefore several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service.

19. It is also trite that for the purpose of grant of back wages, conduct of the concerned workman also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the facts of each case. It cannot be claimed as a matter of right. Further it has to be pointed out that while servicing in an organisation, it is highly unethical and against service/labour laws for a workman, under the pretext of leave without salary/wage taking up another employment either

domestically or overseas, such a conduct and attitude cannot be encouraged or tolerated. Further signing up a contract of employment for some years and citing it as a reason for his inability to join duty when recalled weighs against the case of the petitioner for back wages. In this case, the petitioner was working in Sam San Hin Loong Engineering Works Private Limited, Malaysia at the relevant point of time as admitted by him. Considering the facts and circumstances of this case, this court comes to the conclusion that the petitioners are not entitled to get the full back wages and other benefits. The point is decided accordingly.

20. In the result, the industrial dispute is allowed in part to the aforesaid extent and the respondent/management is hereby directed to reinstate the petitioner with continuity of service. However, the petitioner is not entitled to get full back wages and other benefits. There is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 25th day of March, 2010.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

*List of witnesses examined for the petitioner: Nil*

*list of witnesses examined for the respondent: Nil*

*List of exhibits marked for the petitioner:*

- Ex.P1— Copy of memorandum, dated 17-12-1983 issued to the petitioner.
- Ex.P2— Copy of the letter, dated 14-10-1996 sent by the petitioner to respondent.
- Ex.P3— Copy of the notice, dated 4-1-1997 sent by the respondent to Murugesan.
- Ex.P4— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P5— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P6— Copy of the memorandum, dated 6-1-1998 sent to Enquiry Officer.
- Ex.P7— Copy of the letter, dated 3-5-1999 sent by the petitioner to the respondent.
- Ex.P8— Copy of the letter, dated 27-6-1999 sent by the petitioner to the respondent.
- Ex.P9— Copy of paper publication, dated 24-7-1998.

- Ex.P10— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P11— Copy of the letter, dated 11-10-1999 sent by the petitioner to the respondent.
- Ex.P12— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P13— Copy of the letter, dated 9-3-2000 sent by the petitioner to the respondent.
- Ex.P14— Copy of the letter, dated 5-11-2000 sent by the petitioner to the respondent.
- Ex.P15— Copy of the statement filed by the respondent.
- Ex.P16— Copy of the letter, dated 30-1-2001 sent by the petitioner to the respondent.
- Ex.P17— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P18— Copy of the letter, dated 9-7-2001 sent by the petitioner to the respondent.
- Ex.P19— Copy of the letter, dated 23-7-2001 sent by the petitioner to the respondent.
- Ex.P20— Copy of the letter, dated 20-8-2001 sent to Secretary to Government.
- Ex.P21— Copy of the office order, dated 7-1-1995 sent to one Rajagopalan.
- Ex.P22— Copy of the office order, dated 21-6-1995 sent to one Balu.
- Ex.P23— Copy of the letter, dated 12-10-1996 sent by one Murugesan.
- Ex.P24— Copy of the notice sent by the respondent
- Ex.P25— Copy of the letter, dated nil sent by the petitioner to the respondent.
- Ex.P26— Copy of the enquiry report.

*List of exhibits marked on the side of respondent:*

- Ex.R1— Copy of the letter, dated 14-10-1996 sent by the petitioner to the respondent.
- Ex.R2— Copy of the notice, dated 4-1-1997 sent by the respondent.
- Ex.R3— Copy of the letter, dated 20-1-1997 sent by the petitioner to the respondent.
- Ex.R4— Copy of the charge memo. dated 9-5-1997 to the petitioner.
- Ex.R5— Copy of the letter, dated 19-5-1997 sent by the petitioner to the respondent.
- Ex.R6— Copy of the office order, dated 16-5-1997 issued to the petitioner.

- Ex.R7— Copy of the memorandum, dated 12-7-1997 issued to Enquiry Officer.
- Ex.R8— Copy of the notice, dated 4-8-1997 issued to the petitioner.
- Ex.R9— Copy of the acknowledgment card.
- Ex.R10— Copy of the identity card of the petitioner.
- Ex.R11— Copy of the daily order sheet, dated 22-8-1997.
- Ex.R12— Copy of the daily order sheet, dated 22-9-1997.
- Ex.R13— Copy of the daily order sheet, dated 7-10-1997.
- Ex.R14— Copy of the memorandum, dated 6-1-1998.
- Ex.R15— Copy of the notice, dated 19-1-1998 sent by the respondent.
- Ex.R16— Copy of the acknowledgment card.
- Ex.R17— Copy of the returned postal cover.
- Ex.R18— Copy of daily order, dated 3-2-1998.
- Ex.R19— Copy of the acknowledgment card.
- Ex.R20— Copy of the paper publication.
- Ex.R21— Copy of the letter, dated 13-3-1998 sent by the petitioner to the respondent.
- Ex.R22— Copy of the notice issued by the respondent.
- Ex.R23— Copy of the returned postal cover.
- Ex.R24— Copy of the report, dated 25-3-1998.
- Ex.R25— Copy of the letter sent by the Enquiry Officer.
- Ex.R26— Copy of show cause notice, dated 18-6-1998.
- Ex.R27— Copy of the notice, dated 4-1-1997.
- Ex.R28— Copy of the office order, dated 7-1-1995.
- Ex.R29— Copy of the no objection certificate.
- Ex.R30— Copy of the circular issued by the respondent.
- Ex.R31— Copy of the memorandum, dated 6-1-1998.
- Ex.R32— Copy of the charge memo. dated 25-5-1998.
- Ex.R33— Copy of personal file of S. John.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G. O. Rt. No. 91/AIL/Lab./J/2010, dated 6th May 2010)

## NOTIFICATION

Whereas, the Award in I.D. No.12/2004, dated 4-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Mailam India Limited, Puducherry and Thiru M. Venkatesan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**G. MALAR KANNAN,**

Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

*Thursday, the 4th day of March 2010.***I.D. No. 12/2004**

M. Venkatesan . . . Petitioner.

*Versus*

The General Manager,  
Mailam India Limited,  
Pondicherry . . . Respondent.

This case coming on 25-2-2010 for final hearing before me in the presence of Thiru B. Mohandass, Counsel for the petitioner, Thiru R. Ilancheliyan, Advocate for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:—

**ORDER**

This industrial dispute has been referred to as per the G.O. Rt. No.24/2004/Lab./AIL/J, dated 9-2-2004 for adjudicating the following:—

1. Whether the non-employment of Thiru M. Venkatesan by the management of M/s. Mailam India Limited, Pondicherry is justified or not?

2. To what relief, he is entitled to?

3. To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The facts of the Industrial Dispute in brief are as follows:—

The petitioner joined the service of the respondent as an employee in November 1990. He had been discharging his duties in a very sincere and honest manner without any black mark. The respondent company sent a disciplinary action notice, dated 20-6-2002 stating that the management received reports alleging various complaints about gross misconduct as well as indiscipline of serious nature against him and the chief supervisor M. Mohan. The petitioner was placed under suspension through the above notice with immediate effect and subsequently show cause notice dated 26-6-2002 alleging charges of misconducts against him was sent. As the disciplinary action notice, dated 20-6-2002 as well as the show cause notice, dated 26-6-2002 were in English and he could not understand the contents of the same, he requested the respondent management through letter, dated 7-7-2002 for Tamil translation of the above documents. Despite his repeated requests, the management did not come forward to furnish Tamil translation of the above documents and falsely stated that they are given to him. Then the management appointed Enquiry Officer alleging that he did not submit any explanation for the charges and later only through the Enquiry Officer, Tamil translation of the above items were supplied to him. The Enquiry Officer submitted Enquiry Report, dated 27-2-2003 finding the petitioner guilty of the charges. Based on the enquiry report, the petitioner was terminated. To protest against the order of the respondent company, the petitioner approached the Conciliation Officer through representation, dated 23-5-2003. The respondent submitted his reply, dated 7-7-2003 with false and vexatious allegations against the petitioner. The conciliation ended in failure report, dated 19-11-2003 by the Conciliation Officer. As such the petitioner approached this court seeking necessary relief. The Enquiry Officer has acted in a biased manner by acting in favour of the management and as per the instructions of the management. Had the petitioner been given proper opportunity to cross examine the witnesses, he would have proved the false deposition of the witnesses. Hence, this industrial dispute.

3. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

The petitioner joined as workman in the respondent company on 1-6-1996 and used to be habitual offender of unusual leave, unauthorised absence and so on. As such the petitioner indulged in an act of threatening and assaulting the supervisor on 12-6-2002. Subsequently, he brought some outsiders and manhandled the supervisor and caused injuries. The petitioner workman also involved in an act of criminal intimidation and threatened the respondent management with deadly weapons in connivance of some outside elements. Hence, the petitioner was placed under suspension. Subsequently domestic enquiries were conducted and upon the charges being proved, his services were terminated. The enquiry was conducted by the Enquiry Officer according to the principles of procedures laid down under law. The petitioner was given due opportunities to defend himself before the Enquiry Officer and only the petitioner acted in a very bad and non co-operative manner. Hence, he prays for dismissal of the petition.

4. During enquiry, on the side of the petitioner, Ex.P1 to Ex.P 20 were marked by consent. On the side of the respondent, Ex. R1 to Ex.R21 were marked by consent.

5. *The point for consideration is:*

Whether the dismissal of the petitioner is justified or not?

6. *On this point:*

This reference has been made by the Government to decide whether the non-employment of the petitioner by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statements as well as the counter.

7. On hearing both sides and on perusing the records, it reveals that the petitioner has been dismissed by the respondent. The petitioner in his claim statement averred that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. He has conducted the domestic enquiry in a biased manner without giving any opportunity which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings. In fact the petitioner has not

committed any misconducts as alleged by the respondent. But the management have taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer, the management dismissed the said workmen.

8. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquent and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice. Even in the domestic enquiry the petitioner has been allowed to be assisted by his co-employee. Though the petitioner has been given fair chance to peruse the records as well as to cross-examine the witnesses, who were examined on the side of the management in the domestic enquiry, he failed to utilise the same. Posthaste the Inquiry Officer, on considering the documents as well the evidences of the management witnesses had rightly come to the conclusion that the charges of the petitioned were proved. On the conclusion of the report submitted by the Inquiry Officer, the petitioner has been terminated from his services by way of punishment of the mistakes committed by him. Hence, there is no scope to intervene the order of this management by the Labour Court and prays for the dismissal of the reference.

9. At this stage when we peruse the domestic enquiry reports relating to the petitioner, we can understand that three witnesses were examined in the enquiry of the petitioner on the side of the management. The petitioner has been permitted to appear through his assistants and he has been given copy of all the material papers in English and subsequently as requested by the petitioner Tamil translation copies were given to him. Then the management witnesses were examined on the side of the respondent company. The petitioner requested the respondent management to grant time for cross examining the said management witnesses. But the respondent management refused to the request of the petitioner and without giving any opportunity to the petitioner, the Enquiry Officer examined all the three witnesses. Hence, the management witnesses have not been cross-examined by the petitioner and then on the final hearing of the enquiry proceedings, again the petitioner requested to cross examine the said witnesses and the Enquiry Officer refused his request. Finally, the Inquiry Officer decided the enquiry against the delinquent that all the charges

framed against him are proved, Therefore, it is manifest that the Inquiry Officer was posthaste in concluding the enquiry and the Inquiry Officer should not have come to a conclusion without cross examination of witnesses by the petitioner. Further no opportunity was given to the petitioner by the Enquiry Officer to produce the witnesses on his side.

10. Since the Inquiry Officer himself concluded the charges in a biased manner in the domestic enquiry, we need not go into the sustainability of the charge. Upon the biased enquiry report alone, the management also acted to dismiss his employee, which is against the principles of natural justice. No opportunity has been given to the petitioner either by the Inquiry Officer or by the management before the petitioner has been decided to be dismissed from his services.

11. The learned counsel for the respondent has argued that the petitioner workers had resorted to commit acts of serious misconduct, such as, threatening and assaulting the supervisor, brought some outsiders and man-handled the supervisor and caused injuries and criminally intimidated the respondent management with deadly weapons in connivance of some outside elements. Hence, the charges have been framed against the petitioner and the same were proved in the domestic enquiry and in the domestic enquiry also due opportunities and fair chances have been given as per law which were not availed of by the petitioner and on the report submitted by the Inquiry Officer and on proved charges, the petitioner has been dismissed from their service by way of punishment of his mistakes.

12. When the incident is alleged to have happened inside the factory premises, in which one Mohan was said to be assaulted by the petitioner, it is the duty of the respondent to file a police complaint and take action against him. But there is no evidence on records to show that the police complaint was made against the petitioner. The learned counsel for the respondent would point out Ex.P8 letter, dated 12-6-2002 sent by one Mohan, Supervisor of the respondent company to the respondent, complaining against the petitioner and Ex.R9 letter, dated 19-6-2002 given to the police by the respondent management for police protection. Perusal of Ex.P8 would reveal that the said Mohan sent a letter to the respondent management stating that he was assaulted by the petitioner and four others on 12-6-2002. Even after receipt of the said letter, the respondent has not taken any action against the petitioner, which would create doubt as to whether in fact there was an incident on 12-6-2002,

in which the said Mohan was said to be assaulted by the petitioner. If really the incident had happened, the respondent management would have complained to the police and taken action against the petitioner. Further on perusal of Ex.R13 Inquiry Report, I find that the witnesses during the enquiry, have stated that after assault by the petitioner on the Supervisor by name Mohan, he was taken to the private hospital for treatment. But there is no record filed on the side of the respondent to prove that the said Mohan was treated at the private hospital. When their statements are not corroborated by the documentary evidence, as the admission of the Supervisor in the hospital and the treatment details given to him at the hospital, the Inquiry Officer should not have merely relied on the oral testimony of the witnesses. That their oral testimony alone was taken into consideration by the Inquiry Officer itself speaks to the bias manner of the Inquiry Officer against the petitioner and his mindset leaning towards management.

13. Further Ex.P 9 would reveal that the respondent management sent a letter to the police stating that the petitioner and one Mohan had quarreled and hit each other, which resulted in injury for both and both were sent to the hospital for treatment. It is further stated in the said letter, a group of 20 persons threatened their employees and hence, the respondent company asked for police protection to their factor and their employees. Hence, Ex.P9 is not a police complaint and it is only a letter sent to the police. Further in order to prove the misconduct of the petitioner, the respondent has not examined the said Mohan or other employees of their company. Hence, the respondent has not proved the misconduct of the petitioner as stated by him. Therefore, the decision of dismissal of the petitioner from the company by the respondent is an erroneous one and is also unjustified and accordingly decide this point in favour of the petitioner and as against the respondent.

14. In the result, the industrial dispute is allowed and the respondent/management is hereby directed to reinstate the petitioner with full back wages and other attendant benefits with continuity of service. However, there is no order as to costs.

Dictated to the stenographer transcribed and typed by her, corrected and pronounced by me in the open court on this the 4th day of March, 2010.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

*List of witnesses marked on the side of the petitioner: Nil.*

*List of documents marked by the petitioner:*

- Ex.P1— Suspension order, dated 20-6-2002.
- Ex.P2— Letter, dated 26-6-2002 sent by the respondent to the petitioner.
- Ex.P3— Letter, dated 7-7-2002 sent by the petitioner to the respondent.
- Ex.P4— Lawyer's notice, dated 7-8-2002 sent to the respondent.
- Ex.P5— Acknowledgment card.
- Ex.P6— Enquiry report.
- Ex.P7— Termination order, dated 21-4-2003.
- Ex.P8— Letter, dated 23-5-2003 sent by petitioner to the Labour Officer.
- Ex.P9— Letter, dated 7-7-2003 sent by the respondent to the Labour Office.
- Ex.P10— Letter, dated 19-11-2003 to the Secretary to Government.
- Ex.P11— Letter sent by the petitioner to the Enquiry Officer.
- Ex.P12— Letter sent by the petitioner to the respondent.
- Ex.P13— Letter, dated 16-9-2003 sent by the petitioner to the Conciliation Officer.
- Ex.P14— Copy of proceedings, dated 25-1-2003
- Ex.P15— Memorandum, dated 28-8-2002.
- Ex.P16— Letter, dated 17-6-2002 sent by the petitioner to Factory Inspector.
- Ex.P17— Letter, dated 17-6-2002 sent by the petitioner to the Commissioner, Employees Provident Fund.
- Ex.P18— Copy of the letter sent by the petitioner to the Enquiry Officer, dated 24-9-2002.
- Ex.P19— Acknowledgment card.
- Ex.P20— Postal receipt.

*List of witnesses examined on the side of the respondent: Nil.*

*List of documents marked by the respondent:*

- Ex.R1— Letter, dated 9-12-2001 sent by the petitioner to the respondent.
- Ex.R2— Letter, dated 6-11-2001 sent by the petitioner to the respondent.
- Ex.R3— Letter sent by the petitioner to the respondent.
- Ex.R4— Letter, dated 12-6-2002 sent by the Supervisor to the respondent.

- Ex.R5— Letter, dated 19-6-2002 sent by the respondent to the police.
- Ex.R6— Copy of letter, dated 10-7-2002.
- Ex.R7— Copy of letter, dated 26-9-2002 sent by the respondent to petitioner.
- Ex.R8— Copy of letter, dated 12-6-2002 sent by the Supervisor to the respondent.
- Ex.R9— Copy of the letter, dated 19-6-2002 sent by the respondent to the police.
- Ex.R10— Copy of the letter, dated 26-9-2002 sent by the petitioner.
- Ex.R11— Copy of the suspension order, dated 26-6-2002.
- Ex.R12— Copy of the charge sheet, dated 10-7-2002.
- Ex.R13— Copy of enquiry report, dated 31-3-2003.
- Ex.R14— Copy of the letter, dated 7-4-2003 sent by the petitioner.
- Ex.R15— Copy of the letter, dated 10-4-2003 sent by the respondent.
- Ex.R16— Copy of the letter sent by the petitioner.
- Ex.R17— Copy of the letter, dated 21-4-2003 sent to the petitioner.
- Ex.R18— Copy of the letter, dated 7-6-2003 sent to the petitioner.
- Ex.R19— Copy of the letter sent by the petitioner.
- Ex.R20— Marriage invitation of the petitioner.
- Ex.R21— Copy of the letter sent by the petitioner.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY  
**LABOUR DEPARTMENT**

(G. O. Rt. No. 93/AIL/Lab./J/2010, dated 6th May 2010)

**NOTIFICATION**

Whereas, the Award in I.D. No. 2/2006, dated 8-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Premier Distilleries Private Limited, Puducherry and M/s.E.Suganthi and 12 others over their non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read

with the Notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**G. MALAR KANNAN,**  
Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
Presiding Officer-cum-II Additional  
District Judge.

*Monday, the 8th day of March 2010*

**I.D. No. 2 of 2006**

1. E. Suganthi
2. K. Anjalai
3. M. Neelavathi
4. S. Sathiyavathi
5. S. Gowri
6. E. Anbarasi
7. E. Mahalakshmi
8. S. Muthuvalli
9. C. Kuppu
10. S. Ellammal
11. K. Mangai
12. P. Ellammal
13. K. Parasakthi . . . Petitioners.

*Versus*

The Managing Director,  
Premier Distilleries Private Limited,  
R.S. No.62/8, Madugarai Road,  
Mangalam, Villianur Commune. . . Respondent.

This case coming on 25-2-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, Counsel for the petitioner and Tvl. R. Ilancheliyan and S. Sakthi Priya, Advocates for the Respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:—

**ORDER**

This industrial dispute has been referred to as per the G.O. Rt. No.8/2006/Lab./A/L/J, dated 31-1-2006 for adjudicating the following:—

1. Whether the non-employment of 1. E. Suganthi, 2. K. Anjalai, 3. M. Neelavathi, 4. S. Sathiyavathi, 5. S. Gowri, 6. E. Anbarasi, 7. E. Mahalakshmi, 8. S. Muthuvalli, 9. C. Kuppu, 10. S. Ellammal, 11. K. Mangai, 12. P. Ellammal and 13. K. Parasakthi by the management of M/s. Premier Distilleries Private Limited, Mangalam, Pondicherry are justified or not?

2. If not, what relief, they are entitled to?

3. To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The facts of the industrial dispute in brief are as follows:—

The petitioners were the workers of the respondent industry among the total 72 workers. The petitioners and other workers had formed an union under the guidance of All India Trade Union Congress (AITUC). The authorised representatives had applied for registration. On 1-10-2004 the respondent management picked up these petitioners from other workers of the respondent industry and made them stand near the main gate inside the premises of the respondent industry and was insisted by the Factory Manager namely, Sundaram to tender resignation from service, while the other workers were denied entrance into the premises of the respondent industry. Since the petitioners had refused to resign, they were made to stand under the hot sun till 1.00 p.m. and the union representatives with the help of Assistant Sub-Inspector of Police, Mangalam Police Station had rescued the workers and brought him outside. Following the above incident, the respondent Management had locked the industry for one week and the petitioners along with other dismissed workers were awaiting in front of the factory premises with the hope of getting employment. Then a show cause notice was issued to the petitioners on seven charges and consequently the domestic enquiry was conducted with Advocate Ramalingam as Inquiry Officer and that the enquiry was conducted for only one hour and that in the process of enquiry not every one of the petitioners was given opportunity. On 8-2-2005 the management had issued the dismissal orders to the petitioners. Aggrieved by the order of dismissal, the petitioners had raised an industrial dispute before the Labour Conciliation Officer and the respondent management had not attended the conciliation meeting. Since the respondent did not attend the consecutive conciliation meetings, the dispute ended in failure and the present industrial dispute had been referred to this court.

3. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

The petitioners have been terminated for the grievous misconduct committed by them and there is no relation to the trade union activity or any other claim whatsoever. The petitioners were the workers in the respondent company and they entered into the act of stopping their work without any prior intimation and instigated an illegal strike and also paralysed the normal functioning of the industry. They have indulged in acts of violence and man-handling the staff and executives and caused extensive damage to the properties of the respondent and only for those unlawful activities, they have been terminated. On the grievous misconduct committed by the petitioners, show cause notices were given, charge sheets were framed and the domestic enquiry was conducted by an independent Enquiry Officer. The enquiry was conducted by giving fair opportunities to the petitioners and the petitioners could not prove themselves that they are innocent and have not committed the misconduct. Upon the charges having been proved in the domestic enquiry, the services of the petitioners were terminated in proportion to the misconduct committed by them. Hence, they pray for dismissal of the petition.

5. During enquiry, on the side of the petitioner, Ex.P1 to Ex.P28 were marked by consent. On the side of the respondent, Ex R1 to Ex.R25 were marked by consent.

6. *The point for consideration is:*

Whether the dismissal of the petitioners is justified or not?

7. *On this point:*

This reference has been made by the Government to decide whether the non-employment of the petitioners by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statements as well as the counter.

8. On hearing both sides and on perusing the records, it reveals that the petitioners have been dismissed by the respondent. The petitioners in their claim statement averred that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. The Inquiry Officer has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice. Moreover the Inquiry Officer has not heard the contentions of the petitioners and the enquiry report has also been submitted with unjustified findings. In fact the

petitioners have not committed any misconducts as alleged by the respondent. But the management have taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer, the Management dismissed the petitioners. To prove their case, the petitioners have marked Ex.P1-charge sheet, dated 14-10-2004 issued to M. Neelavathi, Ex.P2- charge sheet, dated 14-10-2004 issued to K. Parasakthi, Ex.P3-charge sheet, dated 14-10-2004 issued to S. Ellammal, Ex.P4-charge sheet, dated 14-10-2004 issued to S. Gowri, Ex.P5-charge sheet, dated 14-10-2004 issued to S. Muthuvaili, Ex.P6 charge sheet, dated 14-10-2004 issued to C. Kuppu, Ex.P7-charge sheet, dated 14-10-2004 issued to M. Neelavathi, E. Suganthi, Ex.P8-charge sheet, dated 14-10-2004 issued to P. Ellammal, Ex.P9-charge sheet, dated 14-10-2004 issued to E. Mahalakshmi, Ex.P10-charge sheet, dated 14-10-2004 issued to S. Sathivathi, Ex.P11- charge sheet dated 14-10-2004 issued to E. Anbarasi, Ex. P12 Copy of enquiry report, Ex.P13 termination order, dated 8-2-2005 issued to S. Sathivathy, Ex.P14-termination order, dated 8-2-2005 issued to E. Mahalakshmi, Ex.P15-termination order, dated 8-2-2005 issued to E. Anbarasi, Ex.P16-termination order, dated 8-2-2005 issued to S. Gowri, Ex.P17-termination order dated 8-2-2005 issued to E. Suganthi, Ex.P18-termination order, dated 8-2-2005 issued to K. Parasakthi, Ex.P19- termination order, dated 8-2-2005 issued to K. Mangai, Ex.P20-termination order, dated 8-2-2005 issued to C. Kuppu, Ex.P2-termination order, dated 8-2-2005 issued to Muthuvalli, Ex.P22-termination order, dated 8-2-2005 issued to Neelavathi, Ex.P23-termination order, dated 8-2-2005 issued to K. Anjalai, Ex.P24-termination order dated 8-2-2005 issued to P. Ellammal, Ex.P25-copy of the letter sent to the Conciliation Officer on 4-3-2005, Ex.P26-letter, dated 16-5-2005 sent by the respondent company, Ex.P27-copy of the letter, dated 24-10-2005 to Secretary to Government and Ex.P28-copy of the notification dated 31-1-2006.

9. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquents and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioners had been dismissed from their services as per the principles of natural justice. Even in the domestic enquiry the petitioners have been allowed to be assisted by their co-employee. Though the petitioner workmen have been given fair chance to cross-examine the witnesses, who were examined on

the side of the management in the domestic enquiry, they failed to utilise the same. The Inquiry Officer has rightly come to the conclusion that the charges of the petitioners were proved. On the conclusion of the report submitted by the Inquiry Officer the petitioner workmen have been terminated from their services by way of punishment of the mistakes committed by them. Hence, there is no scope to intervene the order of this management by the Labour Court and prays for the dismissal of the reference.

10. At this stage when we peruse the domestic enquiry report Ex.R14 relating to the petitioners, we can understand that four witnesses were examined in the enquiry of the petitioner on the side of the management. The petitioners have them. Then the petitioners were examined and they were cross examined by the respondent management. Finally, the Inquiry Officer decided the enquiry against the delinquents that all the charges framed against them are proved. Ex.R14 would further reveal that on 27-1-2005 all the four witnesses were examined on the side of the respondent management and on the same day itself, the petitioners were asked to cross-examine them without giving sufficient opportunities to them. Therefore, it is manifest that the Inquiry Officer was posthaste in concluding the enquiry and the Inquiry Officer should not have come to a conclusion without giving due opportunity to the petitioners, which is unwarranted, which shows the biasedness of the Inquiry Officer against the delinquents.

11. Since the Inquiry Officer himself concluded the charges in a biased manner in the domestic enquiry, we need not go into the sustainability of the charge. Upon the biased enquiry report alone, the management also acted to dismiss their employees, which is against the principles of natural justice. No opportunity has been given to the petitioners either by the Inquiry Officer or by the management before the petitioners have been decided to be dismissed from their services.

12. The learned counsel for the respondent has argued that the petitioners had resorted to commit acts of serious misconduct, such as, wilful insubordination, threatening the staff and the workers with dire consequences, deliberately failing to attend the assigned works, assaulting the Manager and staff, not maintaining discipline within the factory, causing production loss and creating tensed atmosphere in the factory etc. Hence, the charges have been framed against them, which were proved in the domestic enquiry and in the domestic enquiry also due

opportunities and fair chances have been given as per law which were not availed of by the petitioners and on the report submitted by the Inquiry Officer and on proved charges the petitioner workmen have been dismissed from their service by way of punishment of their mistakes.

13. Though on the side of the respondent, it is contended that the police complaint was filed against the petitioners for the alleged assault made by them on the Manager and staff, the said complaint was not filed before this court in support of their contention. Further no witness was examined on the side of the respondent management before this court to prove that the enquiry was conducted in a neutral manner. When the learned counsel for the petitioner has contended that the enquiry was conducted for only an hour, it is for the respondent to prove that the enquiry was conducted in a proper manner after giving due opportunity to the petitioners. But the respondent failed to do so. Hence, the decision of dismissal of the petitioners from the company by the respondent is an erroneous one and is also unjustified and accordingly I decide this point in favour of the petitioner and as against the respondent and they can get the benefit of reinstatement with all consequential benefits. The point is decided accordingly in favour of the petitioners.

14. In the result, the industrial dispute is allowed and the respondent/management is ordered to reinstate the petitioners namely 1. E. Suganthi, 2. K. Anjalai, 3. M. Neelavathi, 4. S. Sathiyavathi, 5. S. Gowri, 6. E. Anbarasi, 7. E. Mahalakshmi, 8. S. Muthuvalli, 9. C. Kuppu, 10. S. Ellammal, 11. K. Mangai, 12. P. Ellammal and 13. K. Parasakthi with consequential benefits. However, there is no order as to costs.

Dictated to the stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this the 8th day of March, 2010.

**E.M.K.S. SIDDHARTHAR,**  
Presiding Officer,  
Labour Court, Pondicherry.

*List of witnesses marked on the side of petitioner : Nil.*

*List of documents marked by the petitioners : Nil.*

Ex.P1— Charge sheet, dated 14-10-2004 issued to M. Neelavathi.

Ex.P2— Charge sheet, dated 14-10-2004 issued to K. Parasakthi.

Ex.P3— Charge sheet, dated 14-10-2004 issued to S. Ellammal.

Ex.P4— Charge sheet, dated 14-10-2004 issued to S. Gowri.

Ex.P5— Charge sheet, dated 14-10-2004 issued to S. Muthuvalli.

Ex.P6— Charge sheet, dated 14-10-2004 issued to C. Kuppu.

Ex.P7— Charge sheet, dated 14-10-2004 issued to M. Neelavathi, E. Suganthi.

Ex.P8— Charge sheet, dated 14-10-2004 issued to P. Ellammal.

Ex.P9— Charge sheet, dated 14-10-2004 issued to E. Mahalakshmi.

Ex.P10— Charge sheet, dated 14-10-2004 issued to S. Sathiyavathi.

Ex.P11— Charge sheet, dated 14-10-2004 issued to E. Anbarasi.

Ex.P12— Copy of enquiry report.

Ex.P13— Termination order, dated 8-2-2005 issued to S. Sathiyavathi.

Ex.P14— Termination order, dated 8-2-2005 issued to E. Mahalakshmi.

Ex.P15— Termination order, dated 8-2-2005 issued to E. Anbarasi.

Ex.P16— Termination order, dated 8-2-2005 issued to S. Gowri.

Ex.P17— Termination order, dated 8-2-2005 issued to E. Suganthi.

Ex.P18— Termination order, dated 8-2-2005 issued to K. Parasakthi.

Ex.P19— Termination order, dated 8-2-2005 issued to K. Mangai.

Ex.P20— Termination order, dated 8-2-2005 issued to C. Kuppu.

Ex.P21— Termination order, dated 8-2-2005 issued to S. Muthuvalli.

Ex.P22— Termination order, dated 8-2-2005 issued to M. Neelavathi.

Ex.P23— Termination order, dated 8-2-2005 issued to K. Anjalai.

Ex.P24— Termination order, dated 8-2-2005 issued to P. Ellammal.

Ex.P25— Copy of the letter sent to the Conciliation Officer, 14-3-2005.

Ex.P26— Letter, dated 16-5-2005 sent by the respondent company.

Ex.P27— Copy of the letter, dated 24-10-2005 to Secretary to Government.

Ex.P28— Copy of the notification, dated 31-1-2006.

*List of witnesses examined on the side of respondent : Nil.*

*List of documents marked by the respondent :*

Ex.R1— Copy of the charge sheet, dated 14-10-2004 sent to E. Suganthi.

Ex.R2— Copy of the charge sheet, dated 14-10-2004 sent to K. Anjalai.

Ex.R3— Copy of the charge sheet, dated 14-10-2004 sent to M. Neelavathi.

Ex.R4— Copy of the charge sheet, dated 14-10-2004 sent to S. Sathiyavathi.

Ex.R5— Copy of the charge sheet, dated 14-10-2004 sent to S. Gowri.

Ex.R6— Copy of the charge sheet, dated 14-10-2004 sent to E. Anbarasi.

Ex.R7— Copy of the charge sheet, dated 14-10-2004 sent to E. Mahalakshmi.

Ex.R8— Copy of the charge sheet, dated 14-10-2004 sent to S. Muthuvalli.

Ex.R9— Copy of the charge sheet, dated 14-10-2004 sent to C. Kuppu.

Ex.R10— Copy of the charge sheet, dated 14-10-2004 sent to S. Ellammal.

Ex.R11— Copy of the charge sheet, dated 14-10-2004 sent to K. Mangai.

Ex.R12— Copy of the charge sheet, dated 14-10-2004 sent to P. Ellammal.

Ex.R13— Copy of the charge sheet, dated 14-10-2004 sent to K. Parasakthi.

Ex.R14— Copy of enquiry report, dated 27-1-2005

Ex.R15— Copy of the complaint, dated 4-10-2004 by one Manivel.

Ex.R16— Copy of the complaint, dated 4-10-2004 by one Janakiraman.

Ex.R17— Copy of the complaint, dated 4-10-2004 by one Pongundram.

Ex.R18— Copy of the complaint, dated 4-10-2004 by one P. Rajankam.

Ex.R19— Copy of the complaint, dated 4-10-2004 by one C. Sakthivel.

Ex.R20— Copy of the complaint, dated 4-10-2004 by one Venkatesh Babu.

Ex.R21— Copy of the complaint, dated 4-10-2004 by one D. Shanmugam.

Ex.R22— Copy of the complaint, dated 4-10-2004 by one Vijayanthimala.

Ex.R23—Copy of the complaint, dated 4-10-2004  
by one P. Bhuvaneshwari.

Ex.R24—Copy of the complaint, dated 4-10-2004  
by one A. Bakyalakshmi.

Ex.R25—Copy of the complaint, dated 4-10-2004  
by one K. Sundaram.

**E.M.K.S. SIDDHARTHAR,**  
Presiding Officer,  
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

(G. O. Rt. No. 94/AIL/Lab./J/2010, dated 6th May 2010)

**NOTIFICATION**

Whereas, the Award in I.D. No. 26/2004(L), dated 17-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Indian Reinforcing Company, Pondicherry and Indian Reinforcing Labour Union over charter of demands and closure has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**G. MALAR KANNAN,**  
Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Pondicherry.

*Wednesday, the 17th day of March 2010.*

**I.D. No. 26/2004(L)**

The President/Secretary,  
Indian Reinforcing Labour Union,  
RTU-1328/2003,  
Dalapathi Thiruma Illam,  
Ayyanar Koil, First Cross,  
Uzhandaikeerapalayam,  
Mudaliarpet, Pondicherry – 605 004 . . . Petitioner.

*Versus*

The General Manager,  
Indian Reinforcing Company,  
R.S. No. 3/3, Kurumbapet,  
Vazhudavur Road,  
Pondicherry

.. Respondent.

This industrial dispute coming before me for final hearing on 4-3-2010 in presence of Tvl. G. Mohan Keerthi Kumar and K. Sankardass, Advocates/ Representatives for the petitioner, M/s. K.R. Vijayakumar and V. Krishnamoorthy. Advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

**AWARD**

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O.Rt.No.86/2004/Lab./AIL/J, dated 18-6-2004 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent *viz.*,

1. Whether the non-implementation of charter of demands of the workers is justified or not. If not justified, what remedies they are entitled to?

2. Whether the closure of the unit justified or not? If not justified, what remedies the workers are entitled to?

3. Whether the claim of workers Tvl. Sarangapani and Masilamani for continued employment with back wages and other legal benefits, is justified or not?

4. To compute the relief, if any, in terms of money, if it can be so computed?

2. The petitioner in their claim statement would state that 16 workmen of the respondent company started a Trade Union and through the same the workmen requested the respondent company to revise their wages along with other facilities, which the respondent company refused and adopted delaying tactics. Therefore, the petitioner approached the Labour Officer (Conciliation) and submitted representation, dated 19-4-2003, which was followed by subsequent letters, dated 30-4-2003, 9-5-2003, 13-5-2003 and 26-5-2003. Although the management filed their representation, the conciliation ended in a failure and the Conciliation Officer sent the failure report, dated 11-7-2003 to the Government, on the

basis of which the industrial dispute has been referred to this court. The petitioner further submits that the respondent company effected closure of the factory on 12-5-2003 and therefore, the petitioner approached the Labour Commissioner for appropriate relief by their letter, dated 26-5-2003. The respondent refused to listen to the advice of the Labour Commissioner and resorted to settle the wages to the workmen and after terminating the 16 workmen from service, the company was reopened with new batch of workmen on contract. The petitioner submits that the non-implementation of the charter of demands of the workmen is unjustified and the respondent has closed down the factory only with intent to crush the activities of the trade union. Further, out of the 16 workmen, 2 workmen by name Sarangapani and Masilamani have not received the settlement and therefore, they are entitled for reinstatement in service with back wages and other benefits.

3. The respondent-management filed counter statement contending that the respondent company was engaged in the manufacture of welded mesh and there are about 19 workmen in their employment. During April 2003, the workmen adopted slow down tactics and also disrupted ingress and egress of men and materials in the factory. The respondent brought the unfair labour practice of the workmen to the notice of the Labour Department. As the activities of the workmen resulted in total breakdown of manufacturing of welded mesh, which is not an economically viable one, the respondent management stopped its manufacturing activities on and from 13-5-2003 and the respondent also communicated that decision to the Statutory Authorities, who also visited the factory and satisfied themselves that there was stoppage of manufacturing activities and closure. The respondent submits that when once the industry is admitted to be closed or the closure is found to be true and *bona fide*, any dispute arising in the reference would fall outside the purview of the Industrial Disputes Act. Further, the respondent after closing the manufacturing activity offered closure compensation to all its workmen and except the two claimants Sarangapani and Masilamani, the other workmen have accepted the factum of closure and received the closure compensation and have settled their claims with the respondent management. Therefore, the reference made before this court itself is beyond the powers of the Government and the question of non-implementation of charter of demands of the workmen does not arise at all. It is further contended that when the factum of closure has been accepted by all workmen, the question as

to whether the closure is justified or not does not arise at all and moreover, the industrial dispute can arise, continue or required to be settled only in a running industry and not in a closed industry. Further, the Hon'ble Apex Court has reiterated that it is for the management to decide as to how to run or not to run business and neither the Government nor the judicial authority can interfere with the right of the management to run the factory in a particular fashion or not to run as long as there is no violation of statutory obligations. The respondent further contends that they decided to close down the manufacturing activities on and from 19-5-2003 and the said decision as well as payment of compensation to the employees was also informed to the statutory authorities appointed by the Government of Pondicherry. The statutory authorities were also aware of the payment of compensation to the majority of workmen except the two workmen, who are continuing in this dispute and as such there is no merit in the claim of the petitioner. It is denied that the respondent is continuing its manufacturing activities. On the other hand, the respondent with a view to utilise the property belonging to the company and earn some returns, has leased out the plant and machinery, which cannot be questioned by anyone much less the two workmen. The petitioner has preferred the claim only to harass the respondent and the claim of the respondent is devoid of any merits and is liable to be rejected.

4. On the side of the petitioner, Exs.P1 to P12 have been marked. On the side of the respondents, the Manager of the respondent company by name S.V.Venkatasubramanian was examined in chief through proof affidavit as R.W.1 through whom Exs.R 1 to R 28 have been marked and R.W.1 was cross-examined on 17-12-2009. Subsequently at the time of arguments, the respondent has marked on consent the alleged lease deed between them and one S.S.Rangasamyraja as Ex.R29 and the Permanent Registration Certificate of the respondent company as Ex.R30.

5. *Now the point for determination is:*

“Whether the petitioner is entitled for the relief sought for?”

*On point :*

6. Both sides argued their case and also filed written arguments. Records perused.

7. The learned counsel for the petitioner argued that 16 (sixteen) workmen of the respondent company

formed the petitioner-union and demanded for enhancement of wages. The respondent management was not willing to pay enhanced wages due to which the matter was taken up before the Labour Officer (Conciliation). When the matter was pending before the Labour Officer (Conciliation), the respondent by letter under Ex.P3 addressed to the Labour Department alleged that the workmen have been adopting slow down tactics and that they have informed the workmen that such an act was illegal. Subsequently, by the letter Ex.P4, dated 12-5-2003, the respondent have informed the Labour Department that the industry has been passing through a critical period and they are not able to get sufficient orders from their customers and having carefully assessed the situation for the last six months, the management found that the unit was not economically viable and that there was also non-co-operation from the workers and as such the partners have regretfully decided to close down the manufacturing activities and that there were 21 workmen in employment, including two office staff. On the same day, the respondent has issued Ex.P6 notice to individual workmen and also put up the said notice on the notice-board of the company stating that the production activities have been stopped from 13-5-2003 and that for the stoppage period, there would not be wages under "no work no wage" policy. Subsequently, under Ex.P5 letter dated 21-5-2003, the respondent has informed the Labour Department that their decision to close down the manufacturing activities was final and they have requested the Labour Officer (Conciliation) to send a report under section 4 of the Industrial Disputes Act and also informed that there was no dispute to be discussed or conciliated upon. Further, under Ex.P7 letter, dated 5-6-2003, the respondent has requested the Labour Officer (Conciliation) to close the conciliation, since the unit was closed from 19-5-2003. It is also argued that some time later, the respondent reopened the factory and employed new set of workmen, thereby, refusing to offer work to the two workmen herein. The learned counsel for the petitioner also submitted that the respondent with ulterior motive did not issue appointment order to these workmen at the time of joining and that the alleged closure of the factory by the respondent is only with a *mala fide* intention of getting rid of those workmen then in employment and their removal from service is highly unjustified. He further submitted that the alleged closure is a mere pretence and not an effective one and in fact, the respondent still continues to run the factory under the same name and as such, he has prayed this Court to order reinstatement of the two workmen with full back wages and attendant benefits.

8. *Per contra*, the learned counsel for the respondent argued that the petitioner-union cannot question the closure, since the motive behind the closure is immaterial. The closure may be for any reason like suffering continuous loss, non-co-operation from employees and these reasons may not be exhaustive. He further submitted that change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. Therefore, the respondent has leased out the factory and the premises to some third party and getting the rental income and he is not prevented by law to do so. The learned counsel for the respondent would further argue that when once the mill has been closed and the majority of workmen have obtained the compensation amount due to them, there is no industrial dispute subsisting between the respondent and the petitioner-union only in respect of two workmen, who have willfully rejected to accept the compensation paid by the respondent-factory. He has prayed this court to dismiss the industrial dispute. In support of his argument, the learned counsel for the respondent relied upon the following Rulings:

1. *M/s. Tatanagar Foundry Company Limited, Vs. Their Workmen [1969 (3) Supreme Court Cases 466]*.

In the present case the totality of facts and circumstances would lead to the conclusion that the undertaking at Jamshedpur was closed down completely and was a final and irrevocable termination of the business itself. The Tribunal has come to a finding that the closure of the business was not *bona fide* but the closure was done in order to victimise the workmen. As regards the financial condition of the company in 1966 has not worsened to such an extent as to reasonably constitute a good ground for closing the business altogether. It might have been a ground for reorganising the company of rationalising it by retrenchment or otherwise but it could not be a ground for winding up the business altogether. In our opinion the finding of the Tribunal on this point is defective in law. It is now well-established that in the case of a closure the employer does not merely close down the place of business but he closes the business finally and irrevocably. The closure has to be genuine and *bona fide* in the sense that it should be a closure in fact and not a mere pretence of closure.

The motive behind the closure is immaterial and what is to be seen is whether it is an effective one. Taking into account the entire set of circumstances and facts in the present case we are of opinion that there has been in fact a closure of the Jamshedpur

business and the finding of the Tribunal that there was lock-out is defective in law and must be *set aside*. According to the appellant the main reasons for the closure are (1) financial condition of the appellant, (2) non-availability of orders for supply of goods, (3) non-co-operation from the workmen in standardisation of the working force and for reduction of the high percentage of rejection.

2. *Pipraich Sugar Mills Limited, Vs. Pipraich Sugar Mills Mazdoor Union* [A.I.R.1957 S.C,95(V44, C 13 Feb.).

The object of all labour legislation is firstly to ensure fair terms to the workmen, and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these objects again can have their fulfillment only in an existing and not a dead industry. Hence, the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry.

3. *In Burn and Company Limited, Calcutta Vs. Their Workmen* [(S) AIR 1957 SC38](C).

Object of all labour legislation was firstly to ensure fair terms to the workmen and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public might not suffer. Both these objects again can have their fulfilment only in an existing and not a dead industry.

4. *Government of India Vs. Workmen of State Trading Corporation* [(1997) 11 Supreme Court Cases 641].

The counsel for the State Trading Corporation also stated that notwithstanding the same, the workmen had been paid compensation under section 25-FFF. The counsel for the workmen stated that some of them have not accepted the compensation. That is a different matter altogether. If the compensation has been offered and not accepted, one cannot find fault with the employer. We also find that the High Court did not record any finding on this question.

5. *General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others* [(1985) 1 Supreme Court Cases 312].

While examining whether the employer has imposed a lock-out or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lock-out is

necessarily temporary or for a period. The employer may close down industrial activity *bona fide* on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue the industrial activity. There may be a closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may have necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed.

The duration of the closure may be a significant fact to determine the intention and *bona fides* of the employer at the time of closure. but is not decisive of the matter. To accept the view taken by the Industrial Court would lead to a startling result in that an employer who has resorted to closure, *bona fide* wants to reopen, revive and re-start the. industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretence.

6. *Workmen of the Indian Leaf Tobacco Development Company Limited, Guntur Vs. Management of Indian Leaf Tobacco Development Company Limited, Guntur*. [(1969) 2 SCR 282: AIR 1970 SC 860 : (1970)1 LLJ 343].

“How far the demands of the union viz., (i) that no depot which worked during 1962 season should be closed and (ii) that no workman who worked in 1962 season should be retrenched, are justified?”.

The Tribunal, thus, came to the finding that the closure of these depots was real and genuine and that the suggestion of the appellants that only a device was adopted of carrying on the same business in a different manner had no force at all if the same business had been continued, though under a different guise, the claim of the workmen not to be retrenched could possibly be considered by the Tribunal; but on the finding that there was a genuine closure of the business that used to be carried on at the depots, no question could arise of the retrenchment being *set aside* by the Tribunal. The Tribunal could not ask the company to reemploy or reinstate the workmen, because there was no business for which the workmen could be required.

7. *Indian Hume Pipe Company Limited Vs. Workmen* [(1968) 3 SCR 130 : AIR 1968 SC 1002 : (1969) 1 LLJ 242].

There is no dispute that the factory was closed on December 31, 1964 and the dispute raised was referred to the Industrial Tribunal in April 1965. The

Tribunal noted in its award that the factory was closed by the appellant with effect from January 1, 1965, but it went into the question as to whether the closure of the factory was *bona fide* and justified in the circumstances of the case and came to the conclusion that the reason given by the company to justify the closure was *mala fide* for the purpose of dispensing with the services of the Barakar factory workers who had since the formation of their union been fighting the appellant for betterment of their service conditions.

In our opinion, it was not open to the Tribunal to go into the question as to the motive of the appellant in closing down its factory at Barakar and to enquire whether it was *bona fide* or *mala fide* with some oblique purposes, namely to punish the workmen for the union activities in fighting the appellant. It has been laid down by this court in a series of decisions that it is not for Industrial Tribunals to enquire into the motive to find out whether the closure is justified or not. As far back as 1957, it was observed by this Court in *Pipraich* "Where the business has been closed and it is either admitted or found that the closure is real and *bona fide* any dispute arising with reference thereto would, as held in *K.M. Padmanabha Ayyar Vs. State of Madras*, fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises if one such can be conceived after the closure of the business between the quondam employer and employees".

The use of the expression "*bona fide*" in the above quotation does not refer to the motive behind the closure but to the fact of the closure. The question about the *bona fides* of the closure had to be examined in the case.

8. *In Hatisingh Manufacturing Company Limited Vs. Union of India*:

If the true basis of the impugned provisions is the achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is *bona fide* or otherwise.

"If the action taken by the appellant is not a lock-out but is a closure, *bona fide* and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance it is a lock-out".

It was pointed out there might be more than one motive working in the mind of the employer leading him to close his establishment and it was not for the Industrial Tribunal to examine that question meticulously and decide on the *bona fides* of the motive.

In view of these decisions, our conclusion is that once the Tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.

9. *Kalinga Tubes Limited, Vs. Workmen* [(1969) 1 SCR 287; AIR 1969 SC 90; (1969) 11 LLJ 557].

**The Tribunal found:** The closure of the factory of place of work was a direct consequence of the alleged illegal activities of the workmen and of the refusal by the officers and supervisory staff to carry on their normal work and not due to shortage of raw materials, fuel or power.

This is what Mitter, J. speaking for the court said, "In our opinion it was not open to the Tribunal to go into the question as to the motive of the appellant in closing down its factory at Barakar and to enquire whether it was *bona fide* or *mala fide* with some oblique purpose, namely, to punish the workmen for the union activities in fighting the appellant". It was emphasised that the expression "*bona fide*" used in certain decisions of this court did not refer to the motive behind the closure but to the fact of the closure.

A question immediately arises whether the management could take a quick decision to close the undertaking of manufacturing iron pipes and poles on account of the gherao the magnitude of which was not inconsequential and which was likely to result in deterioration of relations between the management and the workers as also the apprehension expressed by the staff of danger to personal safety. It is not possible to say in categorical terms that closure in the aforesaid background and circumstances would not be genuine or that a great deal of suspicion would attach to the action taken simply because the company was a profitable and growing concern.

9. Upon hearing the arguments of both sides and keeping in view all the relevant circumstances put forth by both sides at the time of alleged closure, the duty rests upon this court to determine whether the closure was a device or pretence to terminate the service of the workmen or whether the closure was *bona fide* and for reasons beyond the control of the employer.

10. In the instant case, it has to be seen that when conciliation proceedings was pending between the petitioner and the respondent before the

Labour Officer (Conciliation), the respondent by letter under Ex.P3, dated 26-4-2003, had addressed to the Labour Officer alleging that the workmen have been adopting slow down tactics. Subsequently, by the letter Ex.P4 dated 12-5-2003, the respondent have informed the Labour Officer that the partners have regretfully decided to close down the manufacturing activities and on the same day, the respondent has issued Ex.P6 notice to individual workmen and also put up the said notice on the notice-board of the company stating that the production activities have been stopped from 13-5-2003 and that for the stoppage period, there would not be wages under "no work no wage" policy. Subsequently, under Ex.P5 letter dated 21-5-2003, the respondent has informed the Labour Department that their decision to close down the manufacturing activities was final and they have requested the Labour Officer (Conciliation) to close the conciliation proceedings. Further, under Ex.P7 letter, dated 5-6-2003, the respondent has requested the Labour Officer (Conciliation) to close the conciliation, since the unit was closed from 19-5-2003. According to the definition under section 2 (cc), "closure" means the permanent closing down of a place of employment or part thereof. Section 25-O of the Industrial Disputes Act deals with the procedure for closing down an undertaking. A reading of the said section would go to show that—

“(1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order

and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made, to a Tribunal under this sub-section it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (1) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation

which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

11. A perusal of the records goes to show that the respondent has not followed the above procedure contemplated under section 25-O of the Industrial Disputes Act before effecting the alleged closure of the mill, despite the fact that conciliation proceedings were pending before the Labour Officer. The respondent has not chosen to produce the production register before this court to show as to what was the expected production capacity, what was the production given by the workmen prior to raising of demand, what was the production given by the workmen at the time of closure, for better appreciation that the workmen adopted slow down tactics. It is further seen that the respondent company is a partnership firm and all the correspondences with the Labour Officer (Conciliation) has been dealt with only by the Manager of the respondent-company. The respondent has not submitted before this court any document signed by at least two partners to show that the partners of the firm intended to close down the mill. With great respect to the oft repeated rulings of the Apex Court, this court is not inclined to go into the question as to the motive of the management in closing down the factory. At the same time, it is the duty of this court to see whether the alleged closure was real and *bona fide* and that it was not a machine of oppression or pretence.

12. In the instant case, the respondent-management is engaged in the manufacture of welded mesh and it is seen from the records that the respondent at the first instance has informed the Labour Officer (Conciliation) under letter Ex.P3, dated 26-4-2003, that the workmen are adopting go slow tactics and that the respondent are closely watching the situation and that they would report, the future development, if any. Subsequently, by letter Ex.P4, dated 12-5-2003, they have informed the Labour Officer that the partners decided to close down the manufacturing activities and simultaneously on 12-5-2003, the notice under Ex.P6 has been put up informing the closure with effect from 12-5-2003. Therefore, the respondent-company has acted swiftly in closing down the production activities within 17 (seventeen) days from the date of their first intimation to the Labour Officer under Ex.P3. Such a course adopted by the respondent is highly illegal and provisions of section 25-O of the Industrial Disputes Act are not complied with. In fact, the respondent ought to have applied to the appropriate authority in the prescribed manner for prior

permission at least, ninety days before the date on which the intended closure is to become effective, by stating clearly the reasons for the intended closure of the undertaking and a copy of such application ought to have been served on the representatives of the workmen.

13. Obviously, in the present case, notice regarding the date of intended closure has not been served either to the Government or to the workmen. On such application, if the Government fails to communicate the order granting or refusing permission to the employer within a period of sixty days from the date on such application, then alone the permission applied for would be deemed to have been granted on the expiration of the said period of sixty days. Hence, it throws a doubt in the mind of this court as to whether the closure was genuine.

14. The hasty attitude of the respondent in closing down the factory abruptly without giving the requisite 90 (ninety) days statutory notice of intended closure as contemplated under section 25-O of the Act would only indicate that the respondent showed scant respect to law and they had not even cared about the pending conciliation proceedings before the Labour Officer (Conciliation), but on the other hand, the respondent seems to have taken law into their hands and have issued an administrative direction to the Labour Officer (Conciliation) to close down the conciliation proceedings and send a report to them under section 4 of the Industrial Disputes Act. This court is of the opinion that companies cannot have authority over the Government and the companies are bound to obey the law as enacted under the Industrial Disputes Act, 1947 and companies like the respondent cannot dictate terms to the statutory authorities by simply justifying their stand in writing and denying the workmen of their legitimate right. As pointed out in the rulings relied upon by the learned counsel for the respondent, though courts are not bound to question the motive for the closure, courts are bound to see whether such closures are *bona fide* and real or whether it has been used as a tool to suppress the poor workmen, who live on the mercy of owners, whose only motive is profit. The owners of the company should not forget that they could earn profits only if workmen employed by them co-operate and work hard skillfully and the companies would be able to achieve the co-operation and efficiency of their workmen only if those workmen are suitably compensated in terms of money and the company also bestows certain care and attention to the welfare of the workmen. Companies like the respondent cannot

take law into their hands and close down the production activities abruptly simply because they are not amenable of paying the wage hike demanded by the workmen.

15. Admittedly, the respondent-company is now being run in full swing still under the name and style of Indian Reinforcing Company. It is the case of the respondent that after closure, the partners have leased out the factory premises and the machineries to some third party and they are receiving the rent. On the other hand, the petitioner would state that the respondent-mill, after ousting all the erstwhile workmen, continues to run the company under a different identity. The respondents did not produce the lease deed before this court for better appreciation. Therefore, this court insisted upon the respondent to produce the lease deed and the Permanent Registration Certificate of the firm and marked the same as Exs.P29 and P30 respectively.

16. A perusal of the Permanent Registration Certificate marked as Ex.P30 goes to show that the Indian Reinforcing Company is a Partnership Firm registered as Small Scale Industry under No.590306045 on 19-3-1998 and it is run in the address of the respondent herein. The company has started its production activity on 19-3-1998. There is no mention anywhere in the records as to who are the partners of the said company. It is also not the case of the respondents that the company is now being run under a different license number allotted to the alleged lessee. It is the case of the respondent that he had leased out the industry to some third party under Ex.P29. A perusal of Ex.P29 goes to show that the lease is for a period of two years commencing from 15-9-2003 and the monthly rent for the premises, plant and machineries has been fixed at Rs.7,500. Since the lease is for a period of two years and since the respondent-company claims that the company has been leased out to third party after effecting closure, he ought to have registered the lease deed as required under the Registration Act in order to prove his *bona fides*. The respondent has also not adduced sufficient evidence to show that the lessee is running the company under a different license number. As per the available records, the company is still being run under the same name and style as Indian Reinforcing Company with the license issued to the partnership firm. Further, it is trite proposition of law that at least two partners have to sign the deeds in respect of a partnership firm but in this case only one partner by name A.R.D. Ramachandra Raja has signed on behalf of the Partnership Firm Indian Reinforcing Company and conspicuously, the

name of the lessee is given as S.S. Rengasamy Raja, which may suggest that the said partner of the respondent-company and the lessee are closely related to each other. When the Lease Deed under Ex.P29 for a period of two years has not been registered and when the company is still being run in the very same name and style of Indian Reinforcing Company with the same license as that was held by the partnership firm prior to closure, this court holds that Ex.P29 is a sham and nominal document created by the respondent with a view to run the same industry under the guise of lease in order to get rid of the erstwhile workmen from their employment. Therefore, Ex.P29 is undoubtedly a sham and nominal document created by the respondent-company with intent to save their skin from the provisions of the Industrial Disputes Act. No doubt, out of sixteen employees, fourteen might have received the compensation paid by the respondent, but that would not suffice or vouch that the company has been really or actually closed. Probably, the fourteen workmen, who had received compensation, would have been happy in finding employment elsewhere, but at the same time, these two workmen Sarangapani and Masilamani would have been unlucky in finding employment elsewhere and as such, these two workmen Sarangapani and Masilamani cannot be directed to follow the same strategy that was followed by majority of their co-workers.

This point is answered accordingly.

17. In the result, Award is passed accordingly by answering the industrial dispute to the effect that—

(i) the closure of the unit is not justified and it is only pretence, as the unit still continues to run under the same name and style as Indian Reinforcing Company and under the same license of the erstwhile Partnership Firm.

(ii) the claim of workmen Thiruvallal Sarangapani and Masilamani for continued employment with back wages and other legal benefits is justified.

(iii) the respondent-management shall forthwith reinstate the workmen Thiruvallal Sarangapani and Masilamani in service with full back wages and attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of March, 2010.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

*List of witnesses examined for petitioner : Nil.*

*List of witnesses examined for respondent :*

R.W.1— 17-12-2009 S.V. Venkatasubramanian  
(Manager).

*List of exhibits marked for the petitioner:*

- Ex.P1— 4-1-2007 Copy of the G. O. Rt. No. 86/2004/  
Lab./AIL/5, dated 18-6-2004.
- Ex.P2— 4-1-2007 Copy of the report on failure of  
Conciliation No.727/2003/LO  
(C)/AIL, dated 11-7-2003.
- Ex.P3— 4-1-2007 Copy of letter addressed to the  
Labour Officer (Conciliation)  
by the respondent management,  
dated 26-4-2003.
- Ex.P4— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the respondent  
management, dated 12-5-2003.
- Ex.P5— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the respondent  
management, dated 21-5-2003.
- Ex.P6— 4-1-2007 Copy of notice issued by the  
respondent management,  
dated 12-5-2003.
- Ex.P7— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the respondent  
management, dated 5-6-2003.
- Ex.P8— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the petitioner  
union dated 9-4-2003.
- Ex.P9— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the petitioner  
union, dated 30-4-2003.
- Ex.P10— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the petitioner  
union, dated 9-5-2003.
- Ex.P11— 4-1-2007 Copy of letter addressed to the  
Labour Officer by the petitioner  
union, dated 13-5-2003.
- Ex.P 12— 4-1-2007 Copy of letter addressed to the  
Deputy Commissioner by the  
petitioner union, dated 26-5-2003.

*List of exhibits marked for the respondent :*

- Ex.R1— 23-8-2007 Notice, dated 12-5-2003.
- Ex.R2— 23-8-2007 Notice, dated 19-5-2003.
- Ex.R3— 23-8-2007 Copy of acknowledgment  
dues.
- Ex.R4— 23-8-2007 Cash voucher.
- Ex.R5— 23-8-2007 Postal Acknowledgment.
- Ex.R6— 23-8-2007 Receipt, dated 19-5-2003.

- Ex.R7— 23-8-2007 Postal acknowledgment.
- Ex.R8— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R9— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R10— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R11— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R12— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R13— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R14— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R15— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R16— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R17— 23-8-2007 Receipt, dated 19-5-2003.
- Ex.R18— 23-8-2007 Letter, dated 26-7-2003.
- Ex.R19— 23-8-2007 Copy of postal cover sent to  
M. Masilamani.
- Ex.R20— 23-8-2007 Cheque, dated 3-12-2003.
- Ex.R21— 23-8-2007 Letter, dated 3-12-2003.
- Ex.R22— 23-8-2007 Copy of postal cover to  
D. Sarangapani.
- Ex.R23— 23-8-2007 Cheque, dated 3-12-2003.
- Ex.R24— 23-8-2007 Letter, dated 3-12-2003.
- Ex.R25— 23-8-2007 Letter, dated 6-12-2003.
- Ex.R26— 23-8-2007 Letter, dated 19-12-2003.
- Ex.R27— 23-8-2007 Returned postal cover  
(two numbers).
- Ex.R28— 23-8-2007 Returned postal cover  
(two numbers).
- Ex.R29— 23-8-2007 Copy of lease deed
- Ex.R30— 23-8-2007 Copy of Permanent  
Registration Certificate.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

**FINANCE DEPARTMENT**

(G.O. Ms. No. 22/F2/2010, dated 25th May 2010)

**NOTIFICATION**

On attaining the age of superannuation,  
Thiru S. Ramakrishnan, Junior Accounts Officer on  
deputation in the Oulgaret Municipality is admitted  
into retirement on the afternoon of 31-5-2010.

(By order)

**A. SELVARAJ,**  
Deputy Secretary to Government (Finance).